

Minutes of the Board of Adjustment meeting held on Monday, September 13, 2010, at 5:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Joyce McStotts, Chair  
Jonathan Russell, Vice-Chair  
Rosi Haidenthaller  
Preston Olsen  
Chad Wilkinson, City Planner  
Tim Tingey, Community & Economic Development Director  
G.L. Critchfield  
Citizens

Excused: Roger Ishino

The Staff Review meeting was held from 5:15 to 5:30 p.m. The Board of Adjustment members briefly reviewed the applications. An audio recording is available for review in the Community & Economic Development office.

Ms. McStotts explained that variance requests are reviewed on their own merit and must be based on some type of hardship or unusual circumstance for the property and is based on state outlined criteria, and that financial issues are not considered a hardship.

CASE #1417 – BRAD WINGET APPEAL – 567 East Edindrew & 6284 South Vinecrest Drive

Joyce McStotts announced that the applicant, Brad Winget, has withdrawn this appeal and will not be heard at this meeting. Mr. Tingey stated he would be happy to meet with those in attendance outside in the hallway for an informal discussion.

APPROVAL OF MINUTES

Rosi Haidenthaller made a motion to approve the minutes from August 9, 2010 as written. Preston Olsen seconded the motion.

A voice vote was made. The motion passed 4-0.

CONFLICT OF INTEREST

There were no conflicts of interest for this agenda.

CASE #1415 – UTAH SOCCER ARENA – 4284 S. Commerce Drive, Project #10-182

David Kingston, Damir Kljagic and Drazen Kljucovic were the applicants present to represent this request. Chad Wilkinson reviewed the location and request for a variance to the 10-foot wide front yard landscaping requirement, and a variance to fence height standards for the property located at 4284 S Commerce Drive. Murray City Code Section 17.152.100 requires 10 feet of landscaping along all frontage areas not occupied by driveways. Section 17.64.030 states that "solid walls and fences within the first 10 feet of a front property line of a nonresidential lot may not exceed 3 feet in height and fences further than 10 feet from the front property line may not exceed 6 feet in height". The Planning Commission reviewed a Conditional Use Permit for establishment of a soccer arena in the M-G-C zoning district which was approved on January 7, 2010. As a condition of approval, a 10-foot wide landscape area along the street frontage on 300 West was required to be installed prior to business license and/or certificate of occupancy for the proposed soccer arena use. The applicant has subsequently

submitted a request for a variance to eliminate the requirement for landscaping along the street frontage.

The property is separated from the street by an 8-foot masonry wall. Records indicate that a variance was approved in 1974 allowing for installation of an 8-foot high wall. Upon further research by staff it was found that the minutes from the meeting indicate that the property owner originally agreed to provide a 10-foot setback between the wall and the property line in order to provide the required landscape area on 300 West. The site plan submitted with the variance application in 1974 also shows a 10-foot setback from the property line. When the wall was subsequently installed, the required 10-foot setback was not maintained and no landscaping was installed. Since the wall does not meet the conditions of the original approval from 1974, the wall either needs to be moved 10 feet behind the front property line or lowered to 3 feet in accordance with ordinance requirements. The applicant has subsequently requested that a variance be granted to allow the 8-foot masonry wall to remain in the current location. Subsequent applications for development of the site in 1977 and again with the most recent application for Whyr'd in 2008 required the installation of landscaping on 300 West. During the approval process for Whyr'd, the City informed the applicant that the 8-foot wall would need to be moved back 10 feet in order to meet the standards of the ordinance. The applicant indicated that they would apply for a variance at that time; however, a variance application was never filed. In order to meet the requirements of the M-G-C zone and the original approval of the 8-foot wall from 1974, the wall will need to be moved back 10 feet and the landscaping installed along the 300 West Street frontage. There are no special circumstances that would prevent the applicant from providing the required 10 feet of landscaping along 300 West. The property is large and has adequate room to provide additional parking on site to replace any reduction caused by installation of the required landscaping. In addition, the location of the wall does not reflect the location originally approved. The City Engineer indicated that there have not been any widening projects on 300 West since the wall was constructed and that the front property line was in the same location in 1974 when the variance for wall height was approved. Properties in the area have the same landscape requirement. The recently approved changes to the Humane Society facility to the north required relocation of their existing fence 10 feet back from the property line in order to meet the requirements of the ordinance. Granting the variance would allow a property right not enjoyed by other properties in the area. Based on review and analysis of the application material, subject site and surrounding area and applicable Murray Municipal Code sections, staff finds that the proposal does not meet the standards for a variance and recommends denial of the variance request.

Jonathan Russell asked if the height of the fence is part of the variance or if the request is strictly for the 10-foot setback. Mr. Wilkinson responded that an 8-foot fence height was granted in 1974 but no variance was granted for the 10-foot setback or the frontage landscaping.

Preston Olsen stated that the applicants desire to receive an occupancy permit for the building and compliance with the fence is necessary for approval of the occupancy permit. Mr. Wilkinson responded that there have been situations where the city has accepted security for temporary occupancy permits, but normally these are not allowed during the summer months where the site improvements could be installed.

Preston Olsen asked about the required frontage landscaping. Mr. Wilkinson responded that the 10-foot frontage landscaping is also required in front of the solid wall.

David Kingston, 3212 South State Street, stated he is representing the landowner and not the tenant for this application. Mr. Kingston stated they are excited about the Utah Soccer Arena's proposal to develop this property and what it will bring to the city. He stated that this soccer complex brings the only indoor official sized soccer arena in the western United States. There has been interest expressed by Real Salt Lake to be able to use this facility for winter time practice and training as well as interest from different youth groups and players of all ages from kindergarten through high school to be able to use this facility. Mr. Kingston stated that the length of a regulation size soccer field is 125 feet and there is barely enough room to accommodate the size. He said that if the fence is required to be moved back 10 feet, the field size will be reduced to 115 feet, which is substandard for a tournament regulation size field.

Joyce McStotts stated that financial implications or hardships cannot be viewed in terms of granting a variance.

Mr. Kingston stated that it makes sense for the property owner and tenant to keep the fence at the existing location because it helps to protect the field of play. He said that instead of tearing down the wall, it would make sense to add an additional 8 feet to meet the fence height exceptions as indicated in Section 17.64.090A, rather than reconstructing an entirely new 18-foot fence. He stated that by keeping the fence at the existing location it creates a safer place for those coming to participate in the soccer matches. He stated that daycares have guarded fences which are blocked for specific reasons to keep persons from looking in. Mr. Kingston stated that the reasons the variance was granted in 1974 are completely different from the reasons for granting a variance today. He stated the original purpose of the property was for a health club and exercise facility. He stated that the adjacent neighbors have not expressed objection to keeping the wall as it currently exists. He stated that the zoning regulations for the M-G-C zone, Section 17.152.010 states "The regulations", including the 10-foot landscaping and fence height regulations, "is designed to impose only so much regulation as necessary to ensure purity of air and water and to protect the environmental quality of the district and adjacent areas." He stated the landscaping will help protect the water and air and it doesn't make sense to impose this requirement in a manufacturing zone. He asked the Board to grant the landscaping and fence setback variances as requested.

Jonathan Russell clarified that there will be both an outdoor and indoor soccer field. He asked what will be done with the two middle tennis courts. Mr. Kingston responded that this area will also be soccer fields and part of it will be for training.

Damir Klijagic, owner of Utah Soccer Arena, stated that the area between the end of the basketball court and the wall varies from about 10-23 feet. He stated that the location of the first tennis court is where the future soccer field will be located, which will be 130'X80'. He said that the adjacent building to the east is the training facility, and adjacent to that will be an official size outdoor field which is the only field that FIFA approved in the western United States. The USA Handball Association is located in Utah and this is the only original sized field in the western United States and is the only place that they can play indoors. He stated that they are also attempting to have an official size outdoor field for the USA Handball Olympic team. He stated that if this is

accomplished they will provide a home for the national USA Olympic team. Mr. Klijagic stated that vandalism and security is a big problem in this area. He stated that vandalism has decreased significantly in the past couple months because they have been working at the site and it is well lit. He stated that starting on October 15<sup>th</sup> the indoor arena will have 150-250 youth teams attending every seven weeks and adult teams will also have an additional 300 spectators every night, so this facility needs to be secure. He stated that he understands the city's requirements and he is willing to do what it takes to improve the property, but in discussions with the FIFA officials there needs to be a place for two emergency vehicles including the fire marshal, and if the wall is required to be moved back 10 feet then he will not be able to meet the fire marshal and police officer parking requirements. Mr. Klijagic stated that he migrated from Europe after surviving the war, and he has made money here and is spending his money here. He stated this site is the perfect place for an official soccer facility and it is his dream to develop it. He stated that financial gain is not his first intention, but he wishes to make this facility a place for many people to enjoy.

Damir Klijagic stated that the improvements to this site have been great and he is willing to invest into the project as it will benefit the community and the youth that will attend this facility. He stated that he anticipates between 800 and 1,000 people coming to this facility each weekend and there will be a game every 45 minutes. He stated that this site would exceed the city codes landscape requirements, and if he has to move the wall there won't be adequate space for emergency vehicles as required by FIFA.

Mr. Russell stated that the two parking spaces for officials could be located elsewhere. Mr. Klijagic stated that the spaces are required according to the United States Futsal Federation. Mr. Russell stated that it is not Murray City's requirement to have those parking spaces in that specific location. Mr. Klijagic said that he must follow the other regulations as well, and that it would be too crowded for these parking spaces if he has to move the wall.

Ms. McStotts asked if the lease on the property is a long term lease. Mr. Klijagic stated that the lease is 66 months on the main building, and that he just came to an agreement a week ago for the rest of the site. He said that he is working on arranging indoor soccer facility practice. He stated that he is already working with an architect on the plans for the fields that will show the lights and other details.

There were no comments from the public pertaining to this item.

Preston Olsen stated that if a variance is granted it stays with the property forever. He asked about the height of the existing fence and if it must be extended if it will also require a variance. Mr. Wilkinson stated that the code offers some exceptions for playing field fences, stating that the fence cannot be located on the property line or within the first 10 feet. He said that behind the 10-foot setback, a property owner can construct up to an 18-foot playing field fence without any variance or special approval. He stated that with this fence's current location, a variance would be required to go any higher. Ms. McStotts stated that a new application would have to be submitted in the future if wall height or fence location changes are proposed. Mr. Olsen asked if there is any compromise that could be made, such as only moving the fence 5 feet. Mr. Wilkinson replied that the code requires a 10-foot landscaped setback.

Mr. Russell stated that this is an exciting project, but that the Board of Adjustment must make a decision based on the law. He said that there must be a hardship in order to grant a variance and he doesn't believe that a hardship has been proven. Ms. Haidenthaller stated that it is her understanding that if the fence is moved back, it will not allow the north field to be utilized as a competition size field. She said that she can see a hardship on that particular portion of the property because it cannot be fully developed. She asked if it is possible to move the emergency vehicle parking to another location on the property. She asked if the masonry fence can be left on the north side so that a competition size field can be built there.

Ms. McStotts asked staff if the Board can modify the proposal or if they need to deny or approve only what is submitted. Chad Wilkinson responded that in relation to variances, the Board can modify the variance as long as it reduces the variance. He said that it is possible to grant a portion of the variance.

Ms. McStotts stated that this site has changed tenants a number of times over the past several years and asked how many different businesses have been at this location. David Kingston replied that he believes the turnover is due to businesses not working out and that the previous tenants were different from this type of use, although one was an indoor soccer arena. Ms. McStotts stated that the Board is concerned with granting a variance for a single tenant because it will stay with the property even if the tenant leaves. Mr. Kingston stated that the property owner is very interested in working with this tenant in order to make their soccer business a success. He said that the 66 month lease on this property is renewable.

Mr. Olsen asked if there is any way to compromise on the landscape setback. Mr. Russell stated that all of the properties in this area have the same landscape requirement and that they could all make the same argument. Ms. Haidenthaller stated that the difference is that this applicant has a hardship. Mr. Russell stated that he does not think the applicant has proven a hardship exists. He would like to see this portion of the city beautified, which a 6-foot wall with landscaping will accomplish.

Damir Klijagic stated that he understands the Board's concern about the wall looking ugly. He said that he plans to plant 13 trees along the front of the wall. Mr. Russell asked how close the edge of the field is to the fence. Mr. Klijagic stated that it will be 3 to 4 feet. He said that there is a company that makes specialized cushions for the walls to ensure safety, which he has already installed in the arena. He said that he has discussed the trees with the Murray Power Department and obtained input on what types of trees are acceptable.

Mr. Olsen stated that this is a difficult decision and that he doesn't find that a hardship exists. He said that the variance should not be based on the tenant of the property, but rather the property itself. Mr. Russell stated that this is a self imposed hardship.

Jonathan Russell made a motion to deny the variance for Utah Soccer Arena as the criteria has not been met. Preston Olsen seconded the motion.

Call vote recorded by Chad Wilkinson.

A Ms. McStotts

A Mr. Olsen  
A Mr. Russell  
A Ms. Haidenthaller

Motion passed 4-0.

Jonathan Russell made a motion to approve the Findings of Fact as outlined by staff.  
Seconded by Rosi Haidenthaller.

A voice vote was made. The motion passed 4-0.

CASE #1418 – ALEXIS BUTLER – 5872 S. Sagewood Drive, Project #10-196

Alexis Butler was the applicant present to represent this request. Chad Wilkinson reviewed the location and request for a fence height variance for a fence recently constructed on a corner lot at the property addressed 5872 South Sagewood Drive. The property is located in an R-1-8 zone. Mr. Wilkinson stated that corner lots have specific fencing requirements. Murray City Code Section 17.64.020.B addresses fence height on a corner lot and states that fences, walls, hedges, or other screening material greater than three feet in height are permitted within the street side yard setback area, provided that such fence, wall, hedge or other screening material does not exceed 6 feet in height, is not adjacent to a driveway on an adjoining lot, and is not located within a triangular area formed by the property lines with a line connecting them at points 25 feet from the intersection of the property lines. If adjacent to a driveway on an adjoining lot, the maximum fence height shall be 3 feet if solid, or 4 feet if an open type fence within the minimum side yard setback area of the zone. Adjacent means any distance from the corner lot property line to the driveway of the adjoining lot which does not exceed 12 feet. Mr. Wilkinson explained that an open type fence would be chain link or wrought iron bars that provide at least 75 percent visibilities. He said that this fence is approximately six feet high and located in the corner side yard setback area. The neighbors' driveway is located to the west on the adjacent lot within 12 feet of the boundary line between the lots. Mr. Wilkinson stated that a 3-foot high solid fence is the maximum fence height allowed in the side yard setback area when a driveway on the adjacent lot is located within 12 feet of the property boundary which will provide for vehicle and pedestrian safety. He stated that if the driveway was not adjacent to the site that the fence would meet the code. He said that staff has reviewed the criteria for a variance and is recommending denial of the variance request.

Tim Tingey stated that this fence is very nice and has received a positive response from residents in the area. He said that the challenge for staff is that there are state standards that must be met. He clarified for the record that the staff report states that the neighbor to the west may be willing to abandon the driveway use and staff would consider the drive abandoned if the drive approach was removed and landscape was placed there. He said that staff has since learned that the owner of the property is not willing to abandon the driveway.

Rosi Haidenthaller asked how the applicant could alter the fence to bring it into compliance. Chad Wilkinson responded that the fence could be lowered to three feet within the required setback. He said that the code isn't completely clear on this issue, and that the concern relates to safety with vehicles backing out of the adjacent driveway.

He said that the fence could be modified using chain link or wrought iron which would allow greater visibility, and then the fence in the setback area could be four feet high. Mr. Wilkinson stated that another option is to completely remove the fence from this particular area.

Jonathan Russell stated that the driveway adjacent to the fence is not the main driveway for the neighboring home. Chad Wilkinson stated that there are two driveways and that the one being discussed is used for RV parking. He said that the difficulty with the two driveways relates to a variance being permanent to the specific property and that the next owner may use the driveway for a different purpose. Mr. Russell stated that the fence posts appear to be too tall.

Joyce McStotts asked if the issue is only the side fence or a portion of both the front and side. Chad Wilkinson responded that it is all of the fencing contained within the required setback area, with a minimum of 8 feet back on the side.

Alexis Butler, 5872 Sagewood Drive, stated that the fence posts have not been cut to their correct height because she received a letter regarding the complaint and stopped working on the fence. She said that the main driveway for her neighbor is 60 feet away and that she didn't consider the other parking pad as a driveway and that it hasn't been used in the three years that she has lived there. Ms. Butler stated that the fence was put in to accommodate her lot because she has a very narrow backyard. She said that the area on the north of the house is a vegetable garden. She stated that her intention was to utilize the side yard to enlarge the backyard and create a more usable space. Ms. Butler stated that her side yard has a nice view of the mountains that she would like to enjoy. She said that cutting the fence down to three feet is not an option because she wants a secure fence that will keep people in or out and it would not be aesthetically pleasing. She stated that there is a two way stop on Sagewood Drive that many people drive through and that people are actually slowing down now to look around the fence and not running the stop sign. She said that she has made a number of improvements to the house and yard. She said that she thinks the setback is actually 3 feet and not 8 feet as suggested by staff. Ms. Butler stated that she understands the need for ordinances although that she would like to keep the fence without losing its aesthetic appeal.

Ms. Haidenthaller asked what hardship exists. Ms. Butler stated that her hardship is not having a backyard and that the lot configuration makes it so that most of her yard is on the side. Mr. Russell stated that the placement of the home on the property creates the small backyard. Ms. Haidenthaller asked about the distance between the foundation of the home to the back property line. Ms. Butler responded that it is 13 feet.

Tim Tingey stated that a 15 foot setback was allowed for homes built before 1987. He said that the setback in the rear yard is most likely 15 feet. Ms. Butler stated that the corner triangle is 30 feet.

Jonathan Russell stated that if the adjacent driveway wasn't there that the fence wouldn't be an issue.

Chad Wilkinson clarified that the 8-foot setback he referred to earlier is not related to the current location of the fence but rather the distance it needs to be from the property line.

Ms. McStotts opened the meeting for public comment related to this item.

William Barber, 58 West 5878 South, is the neighbor next door who has a driveway adjacent to the fence. He said that the driveway was installed in 1988 in order to park a trailer. He stated that the trailer isn't there anymore and he has put up gates. Mr. Barber stated that the driveway is not in use anymore and that he uses the other driveway on the west side of his house for his cars. He said that he doesn't want to have to dig up the driveway and have more landscape because it will take too much effort to maintain. Mr. Russell asked if Mr. Barber likes the fence. Mr. Barber responded that he does and that he agreed to have the chain link fence removed as long as his neighbor, Barry, would maintain both sides of the new fence.

Roma LaLaian, 66 West Topowa Drive, stated that he likes the fence and it is nicely constructed. He supports his neighbors and said that the fence has helped make people stop at the sign on the corner of Sagewood Drive.

Steven Haverlow, 5885 Sagewood Drive, stated that he agrees that the fence is very nice. He stated that when people are backing out of their driveway, such as the adjacent driveway, they normally stop and look both ways. He said that the fence should stay. Mr. Haverlow stated that if there are new homeowners one day in the Barber's house that they might want to use that driveway for an RV and the fence will help to hide the RV.

Dan Martin, 76 West 5878 South, said that he is also a neighbor and would like to see the fence stay. He said that he has talked with a number of other neighbors and everyone likes it. He encouraged the Board to grant a variance.

There were no additional comments from the public. Ms. McStott's closed the public comment portion of this item.

Mr. Russell stated that the neighbors' comments have been helpful. He said that in relation to a safety issue, he believes that the fence has probably helped slow down traffic on the corner. He stated that the RV pad isn't used and that the fence beautifies the neighborhood. He stated that the Board wants people to be able to fully utilize and enjoy their property. He said that he believes there are some hardships in this case.

Tim Tingey stated that the primary factors in granting a variance are hardship and unique circumstances. He said that corner lots are somewhat unique in that the majority of lots are interior. He stated that the depth of the lot is also unique and the adjacent driveway is a secondary access, which is not addressed specifically in the code. Mr. Tingey stated that these factors should be considered when evaluating code standards.

Preston Olsen stated that he doesn't consider the adjacent driveway as a real driveway. He said that if it was a true driveway that he would not consider a variance.

Rosi Haidenthaller made a motion to approve a variance as literal enforcement of the ordinance would cause an unreasonable hardship. She stated that staff has agreed that the adjacent driveway has been abandoned, although it may be used in the future, and it is a secondary driveway. Additionally, the special circumstances attached to the

property pertain to the depth of the lot limiting the size of the backyard. Ms. Haidenthaller stated that granting the variance is essential to the enjoyment of the property and that fencing variances have previously been granted on corner lots. Seconded by Jonathan Russell.

Call vote recorded by Chad Wilkinson.

A Ms. McStotts  
A Mr. Olsen  
A Mr. Russell  
A Ms. Haidenthaller

Motion passed 4-0.

Chad Wilkinson stated that the Findings of Fact can be rewritten and presented to the Board later or the Board can choose to approve the Findings subject to the changes listed by Ms. Haidenthaller and Mr. Russell and authorize the Chair to sign once the changes are made.

Rosi Haidenthaller made a motion to rewrite the Findings of Fact, reflecting the changes made with the motion, and authorizing Ms. McStotts to sign and approve the Findings. Seconded by Preston Olsen.

A voice vote was made. The motion passed, 4-0.

APPEAL CASE #1419 – HAMLET HOMES – 4272 S. Main Street, Project #10-199

Nick Mingo was the applicant present to represent this request. Chad Wilkinson reviewed the application and stated that this is an appeal of the Director's interpretation related to the definition of townhouses. In the Transit Oriented Development (TOD) District, there are three streets that are designated as principle streets: Fireclay Avenue, Main Street and Birkhill Boulevard. He said that one of the purposes of the TOD is to encourage a mixed use, pedestrian and transit friendly district. He stated that it is important for some of the streets to have a distinct, mixed use feel that would differentiate them from other streets. Mr. Wilkinson said that one way to accomplish that is through design standards, and that the City Council previously approved a minimum 12 foot ceiling height on the first floor. He said that this changes the appearance of the buildings on the street and sets them apart from other buildings in the district, and it also provides flexibility for the types of uses within the space. He stated that the city has worked with Hamlet previously in the TOD area and that they've been a good partner and have done good work. He said that in this situation, the type of product being proposed needs to include a 12 foot ceiling. Mr. Wilkinson stated that the code requires 12 foot ceilings on the primary streets but specifically exempts townhouses from that requirement. He said that originally this project included live-work units, which is an integrated commercial space within a residential unit that allows for a variety of commercial uses. He stated that the zoning ordinance does not have a definition for live-work units or townhouses and so staff relied on the building code. He said that live-work units are a fairly new concept. He said that the International Building Code (IBC) does allow for live-work units to be reviewed by the standards applicable to townhouses, but also includes some specific standards that are not generally applicable to

townhouses, including sprinkler requirements and disabled person accessibility to the commercial portion of the unit. Mr. Wilkinson stated that staff wants to ensure that the building structure will allow for a number of commercial uses in the future, and that the commercial nature of the first floor units distinguishes these spaces from a regular townhouse. He said that the 12 foot ceiling requirement allows flexibility and meets the purpose of the Transit Oriented Development district, which is to provide for a truly mixed use environment. He said that the principal streets should have a different look and feel that will attract supporting uses for the residential units, and that allowing changes on the principal streets would not be consistent with the purposes for the district. Staff recommends upholding the Director's decision on this item.

Ms. McStotts clarified that the main issue is the 12 foot ceilings. She asked how the structures can be townhouses if they contain commercial space. Mr. Wilkinson stated that staff has determined that these are not townhouses. He said that the applicant has indicated that the IBC allows this type of unit to be reviewed by the standards that are applicable to townhouses, with some additional standards that would normally not be applicable to townhouses. He stated that although the units could potentially be reviewed according to the townhouse regulations of the code, the other factors such as the sprinkler system and disability access distinguish the units enough that they are not a true townhouse. Ms. McStotts stated that she believes townhouses are residential and it is confusing that they are also commercial. Ms. Haidenthaller stated that they are mixed-use and that the first floor area is the commercial portion. Mr. Wilkinson stated that this is a new concept and that the definition has not been clearly defined in the ordinance yet, which is why staff is relying on the building code.

Nick Mingo, 308 East 4500 South, stated that the corner unit of the recently completed building is strictly commercial on the main floor and built to commercial code, and the upstairs is strictly residential. He said that the two separate units have a single owner, which the builders chose to do because they didn't want a condominium. He stated that having two different types of construction is very expensive. He said that with the main floor built to commercial standards it could house a restaurant or café. Mr. Mingo stated that further back along Main Street, the live-work units are built according to the International Residential Code (IRC) with the provision that the main floor be flex space to have additional requirements added. He stated that those requirements include the fire safety and ADA accessibility as previously mentioned. He said that the main floor in these units can be used as office or commercial space but could not be a restaurant. He stated that seven units have been sold and that most feedback has been positive, however some complaints have been made about too many stairs up to the second story. Mr. Mingo stated that the number of steps relates to the 12-foot ceiling. He said that they are not trying to avoid live-work or mixed use, but in response to the complaints about the stairs they would like to reduce the ceiling height to 10 feet. He stated that all of the requirements will still be met, but that 10-foot ceilings would make the unit a more livable townhouse. He said that the space on the main floor does not have to be used as commercial and could become a living room or game room. Mr. Mingo said that the TOD ordinance states that main buildings east of the Trax, and main buildings located on principal streets are required to have 12-foot ceilings except for townhouses. He stated that Hamlet Development Corporation is of the opinion that the live-work units are townhouses. He said that Mr. Tingey used the IBC definition of live-work units, but that the building codes still consider live-work to be a type of use within a townhouse. Mr. Mingo stated that this was the intent of the International Code Council that wrote the

code. He read the following from a manual entitled *Significant Changes to the International Residential Code, 2009 Edition*: "A new exception to the scope of the IRC references the IBC for provisions on the live-work units, a mix of residential and non-residential uses. The intent of this change is to permit live-work units in one and two family dwellings and townhouses constructed under the IRC." He said that ultimately the units could have been built like the corner unit, which meets both commercial and residential standards, but that the other units were built entirely as residential units with the first floor meeting additional requirements for commercial. He stated that the IBC considers a live-work unit a townhouse.

Mr. Russell asked how long it will be until this project is completed. Mr. Mingo stated that there are still 300 units left to build. Mr. Olsen asked if the City required that these be built as live-work units. Mr. Mingo responded that it is part of the TOD ordinance.

Tim Tingey stated that the Redevelopment Agency is in a partnership with the developer. He said that a certain amount of commercial and residential space is required and that the live-work units have the commercial component as per the agreement. Mr. Olsen asked if the intent of the agreement is to ensure that commercial units are built in this project. Mr. Tingey responded that the City wants a mix of residential and commercial in the entire project area. Ms. Haidenthaller stated that it is envisioned as a walkable community. Mr. Olsen stated that it does not seem that these units were intended to be residential townhouses and that they were intended to be mixed use units.

Mr. Mingo stated that the units were intended to be townhouses that would allow someone to have a commercial use that is a step above a home occupation. He said that the amount of commercial space that the city envisioned for this project is not feasible. He said that most of the true commercial space currently is not leased. He stated that the live-work units were provided as a compromise to provide something that could immediately have various uses. Mr. Mingo stated that the full intent is to have someone living in the unit.

Mr. Olsen stated that potentially the spaces will not be used as commercial right away. Mr. Mingo stated that the primary use is residential, and that the units were designed and constructed for that purpose.

Ms. Haidenthaller asked if most commercial properties have 12 foot ceilings. Mr. Mingo stated that there are locations that do not have 12 foot ceilings or sometimes a drop ceiling is put in with the extra space used for ventilation and mechanical needs. Mr. Tingey stated that on the principal streets there is a requirement for 12 foot ceiling heights. He said that the vision the City wants to promote is for mixed use. He stated that staff believes the difference between townhouses and live-work units is the commercial aspect.

Mr. Olson asked if the units are built so that an individual could live in the residence and lease the commercial space to a tenant. Mr. Mingo responded that the units can be built with separate entrances, however the entire unit is under single ownership. He said that they are a fee simple arrangement and that he doesn't know if the City would allow someone to sublet the space at some point in the future. Mr. Tingey stated that this scenario is a possibility according to the code. Mr. Mingo stated that they are not asking

to get rid of live-work units and that they are still trying to have a mixed use area. He said that having a 10-foot ceiling allows the number of steps to be reduced by three.

Mr. Russell stated that outside of this area the 10-foot ceilings would be allowed. He said that the intent is to create consistency within this smaller defined area. Ms. Haidenthaller agreed and said that it was approved by the City Council in the master plan for the area. Mr. Mingo stated that the approval relates to main buildings and that these are not main buildings but townhouses. Mr. Russell stated that the units they are discussing are on primary streets. Mr. Mingo replied that the code makes an exception for townhouses on main streets.

Dean Regazzi, 308 East 4500 South, spoke on behalf of Hamlet Homes. He said that the corner unit is built according to IBC standards and the first floor is full commercial use with the upper floor built as an apartment designation. He said that this will remain consistent in the buildings on primary streets. He stated that everything on either side is townhouses, which are permitted and built according to the IRC. He said that there is not a different, stand alone designation for a live work unit. He said that the residential code has a provision for live work units which have some additional requirements. Mr. Regazzi stated that every other unit is designated as a live work unit, and the proposal is to have a 10-foot ceiling height in those units. He said that the ceilings will be a hard lid, with the mechanical systems already installed, so it will not be necessary to have any additional ceiling drop. He stated that the intent is for people to purchase the units as a fee simple townhouse and use the main floor for home occupation uses. He said that the units already purchased are being used for this purpose and that the ceiling height is not going to detract from the intent, and will actually improve the floor by adding an additional 30 inches that is currently used for three additional stairs. He stated that other aspects will not be changed. Mr. Regazzi stated that the current ordinance has exceptions for townhouses, and these units are townhouses.

Ms. McStotts asked for clarification about every other unit being residential. Mr. Regazzi responded that there are four different floor plans for townhouses with a live-work provision. The units in between those townhouses do not have a live-work provision. He said that the first seven units to the left of the corner tower are townhouses, with four of them also being live-work units.

There were no public comments related to this item.

Preston Olsen stated that this is a difficult matter as the Board doesn't often deal with this type of situation and they are being asked to interpret the definition of a townhouse. He stated that he would support staff recommendations at this point because they have determined what the vision is for the area. He said that the Board doesn't have expertise on this subject, and that when the code was written the issue was not clarified. Rosi Haidenthaller stated that her primary question is whether the live-work unit is a use of a townhouse or is it simply a townhouse. She said that the basis for staff's determination is driven by the City Council's vision and master plan for the area. Ms. Haidenthaller stated that she understands another option for 10-foot ceilings is being pursued through Planning and Zoning and the City Council. She said that she thinks the decision regarding this matter should be made using this other option and that she will also support staff's recommendation.

Nick Mingo stated that he agrees that this is a difficult decision and is not well defined in the ordinance. He said that Mr. Tingey used the IBC to define what a live work unit is and has used the definition out of context. He said that he has provided the Board with the context, which states that a live work unit is part of a townhouse. He stated that they are not asking to change the vision for the area. Mr. Mingo requested that the Board make a determination.

Tim Tingey stated that he disagrees with Mr. Mingo's statement. He said that under the IBC, if these units were considered townhouses they would not require additional standards and criteria for live-work units.

Ms. Haidenthaller made a motion to uphold Mr. Tingey's decision that the live-work townhouses are dedicated units with a specific standard for fire sprinklers and ADA guidelines. She stated that because of these standards, the units should be treated more as a commercial property than a townhouse. Additionally, this decision is congruent with the master plan that was approved by the City Council and their vision for this area.

Seconded by Jonathan Russell.

Call vote recorded by Chad Wilkinson.

A Ms. McStotts  
A Mr. Olsen  
A Mr. Russell  
A Ms. Haidenthaller

Motion passed 4-0.

Mr. Olsen made a motion to approve the Findings of Fact as written by staff. Seconded by Jonathan Russell.

A voice vote was made. The motion passed 4-0.

Meeting adjourned.

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Tim Tingey  
Director of Community & Economic Development